

SPECIAL BOARD OF ADJUSTMENT NO. 279

Award No. 598

Docket No. 598

U.P. File No. 920520

Parties Brotherhood of Maintenance of Way Employees
to and
Dispute Union Pacific Railroad Company
 (Former Missouri Pacific)

Statement

of Claim: (1) Carrier violated the Agreement, especially Rule 12, when J. L. Martinez (SSN 523-96-6167) was dismissed from service on July 22, 1992.

(2) Claim in behalf of Mr. Martinez for wage loss suffered beginning July 22, 1992, until reinstated with seniority, vacation and all other rights unimpaired.

Findings: The Board has jurisdiction by reason of the parties Agreement establishing this Board therefor.

The Claimant, Trackman J. L. Martinez, was notified under July 22, 1992 to attend a formal investigation on the charge:

"...you were found in an intoxicated state in your motel room at approximately 2:00 P.M. after failing to report for duty at 7:00 A.M. on June 4, 1992 and were insubordinate when you failed to comply with instructions given you by Track Supervisor Rod Clinton in his letters of August 7, 1991 and October 11, 1991 to avoid any violation of Company Rules with reference to drugs or alcohol."

The investigation was held in absentia because Claimant failed to show thereat. Carrier concluded therefrom that Claimant was guilty as charged. He was dismissed from service as discipline therefor.

The Claimant was accorded the due process to which entitled under Rule 12 - Discipline.

There was sufficient evidence adduced to support Carrier's conclusion of the Claimant's culpability.

The record discloses that Claimant had been advised on August 7, 1991, that his urine samples taken on July 16, 1991 tested positive for illegal or unauthorized drugs. He was disqualified and advised of the availability of the Company's Employee Assistance Program. The Claimant was

given six areas of criteria to comply with. He had to demonstrate a fitness for duty by a negative drug test. He did. On October 11, 1991, the Claimant was notified that he was approved by the Company's Medical Director and was requalified to return to service subject to the following four additional points, in essence, to continue in the program of counseling and treatment by the Employee Assistance Program, enter five years of testing, he was to remain drug free and to avoid any violation of the Company's rules in connection therewith.

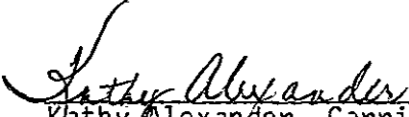
On June 4, 1992 the record shows that Claimant reported for work. Soon thereafter he was removed from service pending the holding of an investigation.

There was sufficient evidence to support the Carrier's conclusion. However, the record also indicates that the Claimant had been offered the opportunity to enter the Company's Employee Assistance Program through the Companion Agreement. In such circumstances, the Board will conditionally reinstate Claimant for that purpose. The Claimant has 30 days after such written notification to enter that program. If he has not done within the 30 days, then such conditional offer is withdrawn and the Claimant will be placed back in the status of a dismissed former employee and the charge of dismissal will be upheld by a denial Award effective that date.

Award: Claim disposed of as per findings.

Order: Carrier is directed to make this Award effective within thirty (30) days of date of issuance shown below.


S. A. Hammons, Jr., Employee Member


Kathy Alexander, Carrier Member


Arthur T. Van Wart, Chairman
and Neutral Member

Issued November 27, 1993.